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Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of communication No. 2/2015*, **, ***

Communication submitted by:	A.A.A.
Alleged victim:	U.A.I.
State party:	Spain
Date of communication:	5 October 2015
Date of adoption of decision:	30 September 2016
Subject matter:	Aunt's request for visitation with her niece
Procedural issues:	Failure to sufficiently substantiate allegations; incompatibility *ratione materiae*
Articles of the Convention:	3, 13, 14, 16 and 39
Articles of the Optional Protocol:	5 (1), 7 (c) and (f)

1. The author of the communication is A.A.A., a Spanish national born in 1971. She submits the communication on her own behalf and on behalf of her niece, U.A.I., born on 29 July 2009. She claims that she is a victim of a violation of article 39 of the Convention and that U.A.I. is a victim of a violation of articles 3, 13, 14, 16 and 39 of the Convention. The author is not represented by legal counsel. The Optional Protocol entered into force for the State party on 3 September 2013.

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* Adopted by the Committee at its seventy-third session (13-30 September 2016).

** The following members of the Committee participated in the consideration of the present communication: Amal Salman Aldoseri, Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Bernard Gastaud, Peter Guráň, Olga A. Khazova, Hatem Kotrane, Benyam Dawit Mezmur, Yasmeen Muhamad Shariff, Clarence Nelson, Wanderlino Nogueira Neto, Sara de Jesús Oviedo Fierro, Kirsten Sandberg and Renate Winter.

*** Pursuant to rule 8, paragraph 1 (a), of the Committee's rules of procedure under the Optional Protocol, the Committee member Jorge Cardona Llorens did not participate in the consideration of the communication.

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Factual background[1]

2.1 The author is a paternal aunt of U.A.I. and has been in open conflict with her brother, U.A.I.'s father, and his wife, U.A.I.'s mother, who is of Finnish origin and has allegedly not been accepted into the paternal family unit. This, together with alleged family problems in relation to inheritance, led to the couple losing all contact with the father's family, including the author, and preventing all contact between the family members and U.A.I.

2.2 On 3 October 2011, the author filed an application against U.A.I.'s parents, requesting the establishment of a schedule of visits between her and her niece. On 2 October 2013, First Instance and Examining Court No. 1 of Tolosa rejected the application on the basis of the best interests of the child, considering that the highly conflictual relationship between her parents and the author could be a source of stress for the child if a visiting schedule were granted.[2]

2.3 On 24 March 2014, the Provincial Court of Guipúzcoa dismissed the author's appeal, on the same grounds as the court of first instance, adding that, according to the psychosocial reports that had been presented, U.A.I. was a happy girl who showed appropriate development and that it was not clear what possible benefit could be derived from initiating a relationship with an unknown aunt who had such a conflictual relationship with the parents.

2.4 The author lodged an appeal in cassation, claiming, inter alia, the violation of the principle of the best interests of the child. On 16 September 2015, the Supreme Court rejected the appeal, finding that there was just cause to prevent the initiation of a relationship between U.A.I. and the author, as it was in the interest of the child not to introduce "a relationship that is clearly risky, to say the least".

Complaint

3.1 The author claims that the State party has violated the rights of U.A.I. under article 3 of the Convention, given that the Supreme Court did not take into account the child's best interests and departed from its earlier jurisprudence that poor relationships between family members were not just cause for refusing a relationship with the children.

3.2 The author claims that U.A.I.'s rights under articles 13 and 14 of the Convention have also been violated. She argues that it cannot be left to the parents to determine who should be in contact with their children, given that children are active subjects of rights and have the right to form their own opinions, develop their personalities and have their family relationships protected.

3.3 The author claims that U.A.I.'s rights under article 16 of the Convention have also been violated as her parents keep her isolated from her father's family and old friends. This constitutes emotional abuse and is authorized by the Supreme Court's judgment. The author maintains that this ill-treatment could not be identified in a short psychological interview with a 3-year-old girl accompanied by her parents and that the girl's relationships with third parties should have been investigated.

[1] The factual background is based on the account of the facts submitted by the author and the judgments of the domestic courts.

[2] On 18 February 2013, First Instance and Examining Court No. 1 of Tolosa issued a first judgment rejecting the author's application; this ruling was subsequently declared invalid by the Provincial Court of Guipúzcoa on 12 June 2013 because the relevant report by the Public Prosecution Service was missing.

3.4 The author claims a violation of her own rights, as well as those of U.A.I., under article 39 of the Convention, arguing that the national courts did not protect U.A.I.'s interests.

3.5 Lastly, she claims to be a victim of a violation of articles 14 and 17 of the International Covenant on Civil and Political Rights.

3.6 The author requests that, on the basis of article 18 of the Convention, the Committee finds that U.A.I.'s parents should receive appropriate professional assistance to prevent the isolation and psychological harm of the child. She also requests that the Committee establish financial compensation for the author for the damage incurred, including the costs of the national judicial proceedings.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the communication is admissible.

4.2 The Committee notes the author's allegations that the national courts, in denying her a schedule of visits with her niece, violated the rights of U.A.I. under article 3 of the Convention by failing to take into account the best interests of the child. The Committee is of the view that, as a general rule, it comes under the jurisdiction of the national courts to examine the facts and evidence, unless such examination is clearly arbitrary or amounts to a denial of justice. The Committee notes that the judgments of the courts of first instance, appeal and cassation to reject the author's application were based on the best interests of the child and duly justified on the grounds of the potentially harmful impact of initiating a relationship with an unknown relative who was in serious conflict with the child's parents. In the absence of additional information showing how the principle of the best interests of the child was violated in rejecting the author's application, the Committee considers that this complaint has not been sufficiently substantiated and declares it inadmissible in accordance with article 7 (f) of the Optional Protocol.

4.3 With regard to the author's claims under articles 13, 14, 16 and 39 of the Convention, the Committee considers that she has not substantiated how the rights of U.A.I. under these provisions have been violated as a result of the lack of contact between U.A.I. and the author and other paternal relatives. The Committee therefore finds that these claims are manifestly unfounded and also declares them inadmissible under article 7 (f) of the Optional Protocol.

4.4 With regard to the author's rights under article 39 of the Convention, the Committee considers that this and the other articles of the Convention protect the rights of children and not the rights of adults. The Committee therefore finds that this complaint is incompatible with the provisions of the Convention and declares it inadmissible in accordance with article 7 (c) of the Optional Protocol.

4.5 Finally, the Committee considers that the alleged violations of the International Covenant on Civil and Political Rights fall outside the scope of this communications procedure. Consequently, the Committee declares this complaint inadmissible under article 5 (1) of the Optional Protocol.

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5. The Committee on the Rights of the Child decides:

(a) That the communication is inadmissible under articles 5 (1), 7 (c) and (f) of the Optional Protocol;

(b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.